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6 Attorneys for Defendant
7 COMCAST CABLE COMMUNICATIONS LLC

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

10
11 In re
12 ACACIA MEDIA TECHNOLOGIES
13 CORPORATION

Case No. C-05-01114 JW
DECLARATION OF DAVID J. SILBERT
Judge: Honorable James Ware

1 I, David J. Silbert, declare that the following is true:

2 1. I am an attorney licensed to practice in the State of California and before this
3 Court. I am a partner in the law firm of Kecker & Van Nest, LLP, counsel for defendant Comcast
4 Cable Communications, LLC in these coordinated actions. I make this declaration of my own
5 personal knowledge, and if called to do so, I would testify to these facts under oath.

6 2. At the June 14, 2005 Case Management Conference, the Court directed the parties
7 to meet and confer on a briefing schedule for the Motion for Reconsideration set for hearing on
8 September 8 and 9, 2005. On the afternoon of June 14, Acacia sent a letter to defense counsel
9 proposing a schedule. A true and correct copy of that letter is attached hereto as Exhibit 1.

10 3. On the morning of June 15, defendants held a conference call to discuss Acacia's
11 proposal. That afternoon, a group of defendants held a call with counsel for Acacia. In that call,
12 the parties agreed to a schedule under which they would file opening briefs on July 11,
13 opposition briefs on August 15, and post-hearing reply briefs on September 23. Acacia's counsel
14 offered to circulate a draft stipulation incorporating the parties' agreed schedule, which they did
15 by email on the following evening, Thursday, June 16. A true and correct copy of that email and
16 draft stipulation are attached hereto as Exhibit 2.

17 4. On Friday and Monday, defendants exchanged emails among themselves
18 concerning revisions to certain language in Acacia's draft stipulation. A group of defendants set
19 a conference call for Tuesday to finalize the stipulation and discuss other matters relating to the
20 Motion for Reconsideration. On that Tuesday, June 21, the Court issued its Order Following
21 Case Management Conference. A true and correct copy of that Order is attached hereto as
22 Exhibit 3.

23 5. I spoke to Acacia's counsel several times shortly after the June 21 Order issued,
24 but we did not specifically discuss the draft stipulation. Instead, we discussed defendants' desire
25 to seek clarification of the June 21 Order, because it directed the parties to address more issues in
26 the Motion for Reconsideration than what defendants had understood in agreeing to the schedule
27 for the Motion. Ultimately, defendants filed a Motion for Clarification, and the Court issued an
28 Order Clarifying the Court's June 21 Order Following Case Management Conference on June

1 27.

2 6. On July 6, I contacted counsel for Acacia to say that I would shortly be
3 forwarding a revised stipulation which proposed revisions to certain language in Acacia's draft.
4 I also advised counsel for Acacia that certain defendants wanted to adjust the agreed schedule
5 slightly—making opening briefs due July 18 instead of July 11, and opposition briefs due August
6 18 instead of August 15—and asked whether Acacia would be amenable to this change. In
7 response, Acacia's counsel told me that, in Acacia's view, the parties should not file briefs at all
8 because the Court had not asked for briefs in its June 21 Order. Acacia subsequently set forth its
9 position in a letter, a true and correct copy of which is attached hereto as Exhibit 4.

10 7. On the morning of July 7, after discussing Acacia's position with defense counsel,
11 I called Acacia's counsel again to determine whether the parties could reach a compromise. That
12 afternoon, Acacia's counsel called back to say that Acacia would not agree to defendants'
13 proposed compromise. In that conversation, Acacia's counsel reiterated Acacia's position that
14 any briefing schedule would be a "change" to the dates that the Court set in the June 21 Order,
15 and thus, under that Order, a briefing schedule could be set only by formal motion.

16 8. Attached hereto as Exhibit 5 is true and correct copy of Acacia's List of Issues for
17 Reconsideration and an Evidentiary Hearing, filed on June 21, 2005.

18 9. Attached hereto as Exhibit 6 is a true and correct copy of the Federal Circuit's slip
19 opinion in *Phillips v. AWH Corp.*, which I downloaded today from the Federal Circuit's website,
20 <http://fedcir.gov/dailylog.html>.

21 10. Counsel for the following defendants have notified me that they join in the
22 Motion to Set a Briefing Schedule for the Motion for Reconsideration filed concurrently with
23 this declaration: The DirecTV Group, Inc.; Echostar Satellite LLC; Echostar Technologies
24 Corporation; Echostar Communications Corporation; Coxcom, Inc.; Mediacom
25 Communications, Corp.; Charter Communications, Inc.; Cable One, Inc.; Cebridge
26 Communications; AP Net Marketing, Inc.; ICS, Inc.; Cable America Corp.; New Destiny
27 Internet Group, LLC; Audio Communications; VS Media, Inc.; Ademia Multimedia, LLC; Adult
28 Entertainment Broadcast Network; Cyber Trend Inc.; Lightspeedcash; Adult Revenue Services;

1 Innovative Ideas International; Game Link Inc.; Club Jenna, Inc.; CJ, Inc.; Global AVS, Inc.;
2 ACMP LLC; and Cybernet Ventures Inc.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct, and that this declaration was executed on July 12, 2005 in San
5 Francisco, California.

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7 /s/

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DAVID J. SILBERT